IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRI DAY, THE THIRTEENTH DAY OF JULY,

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT PETITION NOs : 28900 of 1998 and 1176 of 1999

W.P.No.28900 of 1998

Between:

The Singareni Collieries Co. Officers Cooperative Society Ltd (regd TAB-245) rep by Executive Officer, A. Rajendra Prasad.

..... PETITIONER

AND

1 Huda rep. by Chief Engineer , Hyderabad.
2 HUDA. Rep by Vice Chairman & Managing Director, Hyderabad.
3 Municipal Corporation Of Hyderabad, rep by Commissioner , Hyderabad.
4 Executivve Engineer, IB Division, Red Hills, Hyderabad.
5 The Chief Engineer Minor Irrigation , Hyderabad.
6 The District Collector, Hyderabad Dist. , Hyd.
7 District Collector , Rangareddy dist. , Hyd.
8 MRO, Saroornagar Mandal, Rangareddy Dist.
9 MRO, Saidabad Mandal, Hyderabad Dist.
10 Hyderabad Water Supply & Sewerage Board rep by Managing Director ,Hyd.
11 Secretary to Govt. , Municipal Admn. & Urban Development Hyderabad.

12 The Revenue Divisional Officer, Ranga Reddy East Division, Ranga Reddy

District.

(Amended as per order in W.P.M.P No. 48513 of 1998 dated 28.12.1998)

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to 1) declaring the action of the respondents in issuing the tender notification no. HUDA/DEV/GL.U/98-99, dt 26/9/98 at item no.3 as arbitrary, illegal and violative of Art.14,21 & 300A of the constitution of India. 2)Direct the respondents to take appropriate action to prevent the drainage water from being released into Saaroornagaar tank. 3)direct the respondents to contain the water within the tank area ie. sy no. 62 of Saidabaad village & Mandal extent of Ac 62.10gts & lay a bund within tank area& prevent water spreaded into plots of members of petitioner society by regulating the sluices.

Counsel for the Petitioner: MR.A.SUDERSHAN REDDY

Counsel for the Respondent Nos 4,5,6,7,8,9,11 and 12 **:** GP FOR Revenue.

Counsel for Respondents Nos 1 & 2: Mr.N.Jayasurya rep. by Mr.T.Anantha

Babu, Senior Counsel

Counsel for Respondent No.3: Mr.Ganta Rama Rao

Counsel for Respondent No10**.. :** Standing counsel for Hyderabad Metro

Water Supply and Sewerage Board.

WRIT PETITION NO : 1176 of 1999

Between:

The Singareni Collieries Officers Cooperative

House Building Society Limited (Regd.No.TAB 245)

rep by its Executive Officer, Sri A.Rajendera Prasad

..... PETITIONER

AND

1. Hyderabad Urban Development Authority

rep. by its Vice-Chairman & Managing

Director, Hyderabad.

2. Government of Andhra Pradesh rep. by its

Principal Secretary, Municipal Administration &

Urban Development Department,

Secretariat, Hyderabad.

3. Government of Andhra Pradesh rep by its

Principal Secretary, Revenue Department,

Secretariat, Hyderabad

4. The Commissioner of Land Revenue, Hyderabad

5. The Municipal Corporation of Hyderabad rep. by its

Commissioner and Special Officer, Hyderabad.

6. The Special Officer & Competent Authority, ULC,

Hyderabad.

7. The Chief Engineer, Minor irrigation,

Erramanzil, Hyderabad.

8. The Hyderabad Metropolitan Water Supply

and Sewerage Board rep. by its Managing Director,

Hyderabad.

9. The District Collector, Hyderabad District.

10. The District Collector, Ranga Reddy District,

Hyderabad.

11. The Executive Engineer, I.B.Division, Red hills,

Hyderabad.

12. The Revenue Divisional Officer, Ranga Reddy, East Division,

Hyderabad.

13. The Mandal Revenue Officer, Saidabad mandal,

Hyderabad.

14. The Mandal Revenue Officer, Saroornagar,

Hyderabad.

15. The Honourable Chief Minister of Andhra Pradesh,

Secretariat, Hyderabad.

.....RESPONDENTs

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction more particularly a writ in the nature of writ of Mandamus declaring the action of the respondent authorities in issuing the letter No.7053/PD.II/HUDA/83, dated 9.12.98 as arbitrary, illegal and violative of the Articles 14,21 and 300A of the Constitution of India and be pleased to pass such other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner : MR.A.SUDERSHAN REDDY

Counsel for the Respondent No.1: Mr.N.Jayasurya rep. by Mr.T.Anantha Babu,

Senior Counsel

Counsel for respondents 2 to 4, 6, 7, 9 to 15 : G.P. for Revenue.

Counsel for Respondent No.5 : Mr.Ganta Rama Rao, Standing Counsel

Counsel for Respondent No.8 : Standing counsel for Hyderabad Metro

Water Supply and Sewerage Board.

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ORDER: (Per Sri BRSR.J)

These writ petitions are being disposed of by a common order since the subject matter that arises for consideration is interconnected and the parties are one and the same.

The petitioner is aggrieved by the action of the Hyderabad Urban Development Authority (HUDA) in proposing to widen the existing bund for construction of CRS retaining wall at Saroornagar lake and as well as formation of Earthen bund along the boundary of Saroornagar lake with 4 mts. top width.

The dispute centers around the Saroornagar tank, which is one of the most polluted tanks in twin cities of Hyderabad and Ranga Reddy Districts. The authorities as well as the Cooperative House Building Societies like that of the

petitioner and various individuals and Associations have made their significant contribution for the destruction of the tank once classified as a major irrigation tank which catered the needs of ayacutdars. The water spread area as well as the ayacut disappeared and that resulted in construction of mammoth strictures all around. Now at present a concrete jungle overlooks the tank. Population pressure and unplanned urbanization have vitiated the quality of this lake to such an extent that it is now unfit for even cattle. This lake is chocking to death with sewerage and domestic waste. The impact of pollution is so grave that it has robbed the lake of its natural waste recycling capacity. It is leading towards its inevitable death.

That on the directions of this Court and with the financial support of the State Government of Andhra Pradesh, the Environment Protection, Training and Research Institute (EPTRI) Hyderabad has prepared a comprehensive action plan for the conservation of the Saroornagar lake. Institutional and individual technical expertise was engaged for the purpose of preparing the report. The committee appointed by this Court having fully examined the multi dimensional environmental problems, expressed its concern and anguish with this once beautiful lake spread over parts of Ranga Reddy and Hyderabad Districts in Andhra Pradesh; that the lake over the past two decades, has lost its irrigational command and been subjected to increasing urban environmental pressures from its surroundings. “The main cause for this land use shift seems to have been a lack of environmental perspective on the part of local authorities who have permitted colony lay outs and building activities around the lake, instead of trying to maintain it as a much needed urban lung- space and flood absorption zone.” Residential and Urban growth around the lake environs and resultant disposals in the lake have reduced its water holding capacity, increasing its flood potential and adversely affecting its water and sediment quality. Reported reduction in fish catch, occasional fish kills and a reduced number of phytoplankton species in the lake have been a bio-indicator of the deteriorating lake water quality. Urban sprawls coupled with supper stagnant pools of the Saroornagar have increased mosquitoes, causing social problems like foul odour and created a potential for depletion of groundwater, downstream.”

The committee inter alia observed that the building activity eating into the foreshore and ayacut of the Saroornagar lake seems to have been going on under the authorization of the local bodies and revenue officials without much direct involvement of higher officials in the Town Planning Department and despite some

resistance from the State Irrigation Department. This resulted in the irregular development of the area without proper lay out, communication and drainage facilities. The local authority of Saidapaet village has resorted to illegal action of letting out the Saroornagar Lake itself to a private firm for catching frogs for export purposes. The surplus weir on the southern side with wooden planks, to hold non-seasonal water was also closed by the local authority. That according to the report of the committee, the area of the lake, which was 63 hectares (0.63 sq. km) in 1974 reduced to 52 hectares (0.52 sq. km) in 1996 resulting in an effective loss of 11 hectares (0.11 sq.km) in 22 years. The same is attributed to the changes in the land use in the catchment area, which resulted in surface erosion, increasing sedimentation and subsequent reduction in the spatial spread of the lake. The Saroornagar Lake itself shrunk due to the building activities not only around the lake but in the lake itself.

The lake has become an unauthorized dumping yard for the disposal of municipal solid waste, generated at the surrounding colonies. The household refuse alone contributes significant quantities of solid waste generated within a radius of 2 kms, around the lake. The per capita daily generation of household garbage is estimated at 265 gms as per the records of the Municipal Corporation of Hyderabad. The total household waste generated is calculated at about 18 tonnes per day. The colonies comprising of Madannapet, Karmanghat, Champapet, Lingojiguda and Saroornagar make singular contribution in generation of household garbage which finds its way into the tank. The sewage effluents from P&T Colony, Tapovan colony, Singareni colony, Greenpark colony and other residential complexes enter directly into the lake.

The Committee expressed its concern and observed that a water body of this dimension is a boon to the environment, which is fast growing into an urban concrete jungle. If a new tank/lake has to be constructed to provide the advantages of an ecosystem of this type, to the present urban population of this area, the cost of land alone would be about Rs.80 crores at present market rate. The cost of a new irrigation tank of similar capacity elsewhere in the State would be about Rs.100 crores at the present rates, according to the Irrigation Departmental estimates.

This nature’s gift coupled with the care taken by the erstwhile Nizam rulers

had fallen into the rapacious hands of new Nizams with unlimited resources at their command and capacities to destroy even the nature's gift. All this in the name of development!

Now we shall refer to the facts leading to filing of these writ petitions.

The Government of Andhra Pradesh vide G.O.Ms.No.640 dated 18.4.1981 allotted an extent of 70 acres of land in S.Nos.63, 65, 66, 126 to 136 and 145 to 147 of Saidabad to the Singareni Collieries Company Officers' Cooperative House Building Society Limited, Hyderabad as per the price fixed in G.O.Ms.No.5012, Revenue dated 19.12.1980 and subject to the condition that the land allotted should not be alienated or mortgaged for any other purposes. The society after obtaining allotment, applied for sanction of lay out on 9.12.1981. The land has been reserved in the master plan for recreational zone. The petitioner society submitted a representation to the government on 4.3.1982 requesting it to change the land use from recreational zone to the residential zone to the extent of the site allotted to them. The Bhagyanagar Urban Development Authority vide its proceedings dated 15.7.1982 agreed for change of land use to residential use with a condition that the low lying area should be raised suitably at the time of construction of residential buildings. The Government accordingly issued G.O.Ms.No.188 changing the land use only in respect of recreational use zone to residential use zone. Thereafter, several changes have taken place resulting in modifications in the master plan, the details whereof are not required to be noted.

Finally, the Government by G.O.Ms.No.668 issued notification of draft variation in respect of sites in S.Nos.63, 65, 66, 126 to 136 and 145 to 147, Saidabad which is earmarked for partly recreational use, partly for public and semi public use zone, partly for water bodies and partly for residential use zone in the modified master plan for MCH area sanctioned in G.O.Ms.No.675 dated 9.6.1981 subject to the condition that the petitioner's society shall take necessary action to suitably raise that part of land allotted to them by the Government, which is subject to submersion in Saroornagar tank. On 5.11.1983, the Government issued orders confirming the draft variation which had resulted in furnishing a copy of the revised lay out plan together with a copy of tentative approved plan by the Municipal Corporation of Hyderabad addressed to HUDA for their remarks.

The fact remains that the HUDA having approved the application of the

petitioner society, sanctioned lay out by duly collecting the amounts from the petitioner society. The Municipal Corporation of Hyderabad had also collected developmental charges from the petitioner society. The society allotted various plots to its members and some of them have constructed houses. There is no dispute about the same.

The case of the petitioner-society is that the tank bed of the tank from times immemorial consisted of an extent of Ac.62.10 guntas only. The entire tank bed is in S.No.62 of Saidabad village (Hyderabad) and the land allotted to the petitioner-society never consisted of any water spread area. The petitioners relied upon the counter stated to have been filed by the Mandal Revenue Officer in the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 vouchsafing the fact that the tank bed of the Saroornagar Tank is spread over only in an extent of Ac.62.10 guntas. The petitioner asserts that their activity of house building in no manner intrudes and encroaches into the catchment area of the tank bed.

The gravamen of the complaint is that the HUDA on 26.9.1998 issued a tender notification proposing construction of a bund around the Saroornagar tank, the details whereof we have noticed in the preceding paragraphs.

The plan issued by the 1st respondent HUDA proposing construction of the bund, according to the petitioner society, runs through the house sites of its members. That if such a bund is allowed to be constructed, the members of the petitioner society forever may lose their sites resulting in deprivation of their right to property. The action of the authorities in laying the bund through the lands of the petitioner- society is arbitrary and illegal.

The water level in the Saroornagar tank is on increase on account of blockage of the sluices of the tank by some antisocial elements. That on account of increase in the water levels some portions of the lands allotted to the petitioner society are subjected to inundation. Such spread in water area is beyond the catchment area of Ac.62.10 guntas. The increase in the water levels is also on account of drainage and polluted water being let into the tank together with wastage generated at the housing colonies situate in the lake periphery. The authorities instead of stopping the inflow of such polluted water and wastage resulting in ever increasing water levels, have chosen to lay a bund in such a manner depriving the legitimate rights of the members of the petitioner society to use the land allotted to

them for a valuable consideration. The society had spent huge amounts in developing the lands and laying the roads etc.,

That as per the proposed laying of bund, 365 plots belonging to the members of the petitioner society including some houses, common roads, parks etc., to an extent of Ac.6.00 will get submerged in the tank for ever, is the case of the petitioner-society.

The situation is a very complex one. As is evident from the averments made in the counter affidavits filed by the revenue authorities, in which it is conceded that some fishermen associations in order to meet their selfish ends are causing obstruction in depleting the surplus water and the closure of the sluices led to increase in the water levels in the tank. It is also admitted that the total extent of the tank bed is Ac.62.10 guntas. There appears to be no serious dispute that on account of letting of the drainage water and waste materials into the tank, the water levels are on a constant rise in the tank. Of course, the water is completely polluted and unfit for any use unless cleaned as has been observed by the Committee appointed by this Court. The Sarpanch of the village with a view to have his share in the cake got the sluices closed enabling his goons to catch frogs, perhaps for exporting them. The neighbouring owners in the periphery, whose lands actually extend into the water spread area have applied for and obtained lay outs resulting in construction of buildings and a colony in the name and style of Green Park Colony had come into existence. Ayacut lands were also converted into house sites and houses have come into existence. The release of water may result in inundation of those colonies. It is clearly evident from the record that there is no ayacut as such under the tank for the past about three decades. Several residential colonies with pucca structures have come up in the ayacut land completely blocking the canals leading from the sluices rendering it virtually impossible to operate the sluices. That any release of water through the sluices directly results in inundation of the colonies situate down stream. Such is the complex nature of the issue.

That a significant aspect required to be noticed is that even while the Government approved the proposal to convert the area into residential zone vide G.O.Ms.No.188 dated 28.2.1983, an important condition was attached viz., “that the Singareni Collieries Company Officers’ Cooperative Housing Society shall take necessary action to suitably raise that part of the land allotted to them by the Government which is subject to submersion.”

This condition itself makes it very clear that the Government was actually conscious that a portion of the land allotted by the Government to the society was susceptible to submergence. The same condition was reiterated in G.O.Ms.No.668 dated 1.10.1983 once again directing the petitioner-society to take necessary action to suitably raise that portion of the land allotted to them by the Government which is subject to submersion.

We are not able to appreciate as to why the Government, being aware of the problem that a portion of the land allotted by it was likely to get submerged, had chosen to allot the land and permitted the conversion. The thoughtless, if not irresponsible action on the part of the authorities without any vision whatsoever resulted in this awkward situation.

That this Court in W.P.No.21676 of 1995 filed in public interest ordered a detailed enquiry to be made in respect of about 170 lakes in twin cities of Hyderabad and Rangareddy Districts and a detailed report has been submitted to this Court, referred to hereinabove. The relief prayed for in that writ petition is to direct the authorities to protect all lakes numbering 170 from illegal encroachments, siltation, pollution and take further steps for converting the catchment area as recreation area and green beds. A detailed report has been submitted by the Committee so far as the Saroornagar lake is concerned and this Court having taken note of the report and the status report submitted by the authorities passed the following order.

> "Pursuant to our earlier order, the status report on Saroornagar lake dated 18.12.2001 has been filed. A brief background of Saroornagar lake, a brief report on environment protection Training and research Institution, a project report of M/s.Narshimam & Associates and action taken pursuant thereto, the action taken by the A.P.Pollution Control Board, pre-feasibility report of Dr.R.Venkatraman for lake restoration, establishment of a sewerage treatment plant and suggesting certain works to restore the lake from pollution and to maintain the hydrological balance and the action taken by the Rangareddy Distict Collectorate, L.B.Nagar Municipality and the Municipal Corporation of Hyderabad have been fully furnished with all statistics, particulars and details.
>
> We have carefully perused the status report now filed. In our opinion, all the necessary steps are being taken to make

saroornagar lake pollution and encroachment free and to develop it as tourist spot. The ongoing work and the work proposed to be taken for the development of Saroornagar lake have also been mentioned in detail in the plan annexed to the report. The status report is placed on record.

The writ petition is disposed of accordingly."

Obviously, the HUDA initiated the impugned action pursuant to the directions of this Court and in public interest.

The question that falls for consideration is whether the respondent-Urban Development Authority should be restrained from undertaking to construct the bund as proposed and whether the petitioners are entitled for any relief?.

It is totally unnecessary to go into the question as to what exactly is the catchment area of Saroornagr lake. That according to the petitioner-society, it is Ac.62.10 guntas, which is seriously disputed by the respondents and according to them it is Ac.143.00. The petitioner relies upon the entries made in the revenue record whereas the respondents rely upon the report submitted by the committee appointed by this court in support of their contention. We cannot resolve such disputed questions of fact in a proceeding under Article 226 of the Constitution of India.

The fact remains that the water level is ever increasing in this particular tank for various reasons, which we have already noticed in the preceding paragraphs. Sluices cannot be opened as it results in inundation of colonies located in the down stream. The water spread area in part as well as the ayacut disappeared and fully covered by residential buildings. The thoughtless action on the part of the respondents in permitting and sanctioning layouts in the periphery and foreshore area of the catchment area on account of which various colonies have come into existence is the sole reason resulting in this complex problem. The authorities have also failed in preventing the colonies situate in the periphery of the tank from releasing solid drainage water and wastage into the tank. The fact remains that a portion of the land, whatever may be its extent, earlier allotted to the society by the Government is coming under submersion. The water spreads into a portion of the land of the petitioner society.

The present effort of the HUDA obviously is to protect the actual water spread area without any regard to the actual extent of shikham. The idea is to protect the water source and undertake cleaning of the tank to make it free from pollution.

In our considered opinion, atleast that portion of the land, which is susceptible to submergence, the fact of which was within the knowledge of the Government, ought not to have been allotted to the society on such nominal price.

The petitioner society may not lose its right, title and interest itself in the land on account of submergence. It may continue to be the owner but cannot be permitted to raise any constructions in the facts and circumstances of the case. It is not a fit case for this Court to exercise its discretion under Article 226 of the Constitution of India. This Court is not required to interfere in every case of infraction of any and every right unless such infraction results in grave and irreparable loss and injustice. Public interest parameters are required to be borne in mind by this court while exercising its discretion to issue writs in exercise of its extraordinary jurisdiction.

The action initiated by the respondents to make Saroornagar lake pollution and encroachment free cannot be interfered with by this Court at the instance of the petitioner-society though a portion of its land may be adversely affected not on account of any arbitrary and high handed action on the part of the authorities but on account of the circumstances beyond the control of the authorities. This Court in express terms while disposing of W.P.No.21676 of 1995 dated 23.1.2002 approved the ongoing work and the work proposed to be taken for the development of Saroornagar lake and any direction in this writ petition at the instance of the writ petitioners may run contrary to the order passed by this Court in public interest.

We however make it clear that if on account of the action being initiated by the respondents to make the Saroornagar lake pollution and encroachment free, the lands of the petitioner society gets released from the submergence, the same shall be permitted to be utilized by the petitioner-society and its members in such a manner which may not cause any pollution and encroachment into the actual water spread area of the tank. In such an event, the proposed construction of bund itself will not extinguish the right, title and interest of the petitioner-society in the land. The petitioner-society may retain its title in the land but cannot be permitted to use the same for house building purposes.

However, the cancellation of the lay out vide proceedings dated 9.12.1998 by the HUDA shall in no manner affect the construction of the houses already made by the petitioner society and such portion of the land which is free from submergence. The cancellation of the lay out preventing the petitioner-society and its members from making construction of the houses shall be confined only to such of the area which gets actually submerged or susceptible to submergence in Saroornagar lake. That with regard to other areas, the cancellation shall have no effect. The impugned order dated 9.12.1998 challenged in W.P.No.1176 of 1999 shall accordingly stand modified.

For all the aforesaid reasons, we are not inclined to prevent the HUDA from proceeding further in proposing to widen the existing bund for construction of CRS retaining wall at Saroornagar lake and as well as formation of Earthen bund along the boundary of Saroornagar lake with 4 mts. top width. No relief could be granted to the petitioner-society as prayed for.

With the observations as above, the writ petitions shall stand disposed of. No costs.

(B.SUDERSHAN REDDY,J)

DT. ..07..2004

(GHULAM MOHAMMED,J)

msv

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. Vice-Chairman & Managing Director,

Hyderabad Urban Development Authority,

Hyderabad.

2. The Principal Secretary,

Municipal Administration &

Urban Development Department,

Government of Andhra Pradesh,

Secretariat, Hyderabad.

3. Principal Secretary, Revenue Department,

Secretariat, Government of Andhra Pradesh, Hyderabad

4. The Commissioner of Land Revenue, Hyderabad

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